

town planning

The Basics



CIL & s106



INTRODUCTION

The booklet covers some of the basics relating to the Community Infrastructure Levy and Section 106 Planning Obligations. This booklet does not cover all aspects in depth, further information can be found on the Ministry of Housing, Communities and Local Government website: <https://www.gov.uk/government/organisations/ministry-of-housing-communities-and-local-government>

A series of Town Planning “The Basics” booklets have been produced to assist non-planners with the dark art of Town Planning, these can be downloaded via www.planninghouse.co.uk

Who are Planning House?

Planning House is an independent town planning consultancy which offers a professional & knowledgeable service to meet client needs, we embrace a pragmatic approach by providing realistic & tailored town planning advice.

Headed by Chris Pipe who is a Gamekeeper turned poacher. As former Head of Planning for a Local Authority she knows how to navigate the planning system efficiently and effectively.



WHAT IS A **COMMUNITY INFRASTRUCTURE LEVY?**

When embarking on a new development, you may find you are required to contribute to the Community Infrastructure Levy (CIL).

CIL is a tool that allows local authorities to collect a 'tax' style payment for developments.

The reason for this tax is that new developments will to some extent increase the usage of local infrastructure. To avoid overwhelmed under resourced infrastructure a levy is attached to contribute to supporting the local infrastructure.

Infrastructure can be split into three categories: **Physical**, **Social** and **Green**.

Physical infrastructure is more than just roads, it includes the energy supply, the water systems, waste management, flood alleviation, transport links etc.

Social infrastructure includes the majority of amenities that keep our communities running like hospitals, schools, arts and culture, places of worship and more.

Green infrastructure includes public open spaces, parks, play areas and our woodlands.

Don't be caught out by additional costs, check with your local authority to see if CIL applies.



WHO PAYS CIL?

Once adopted, CIL is non-negotiable and based on the infrastructure needs of an area. An authority can decide not to adopt a levy or set a tariff of zero for particular developments or locations. Each authority is different.

Typically, developments that create 100 gross square metres of new floorspace require levy payment as well as potentially any new houses or flats. Contributions will depend on the development and the tariffs adopted by your local council.

There are of course exemptions from the levy that can be available in certain situations. For instance:

- Structures which are not buildings (e.g. pylons);
- Social housing that meets relief criteria;
- Buildings in which people do not normally go;
- Charitable development that meets relief criteria;
- Vacant buildings brought back into the same use;
- Developments of less than 100 square metres excluding a whole house;
- Residential developments made by self-builders can be made exempt of the levy through application;
- When levy liability is less than £50.

If CIL is payable in relation to your development, it is the landowner that is liable to pay for the levy. However, anyone involved in the development can take liability for paying the levy if they chose. If no one assumes liability, the liability defaults to the landowner who then has to pay as soon as development commences.

CIL may be liable even if your development is Permitted Development.



HOW ARE **CIL** **RATES SET?**

Charging rates are set based on infrastructure need which must be evidenced. This evidence is weighed against the potential impact on the viability of developments in order to create a rate with appropriate balance.

Differential rates can be used to ensure the viability of developments are not unnecessarily threatened, rates can change based on geographical zones or boundaries, types of development and scale of development. For example, in instances where economic viability is noticeably lower, rates will be lowered accordingly to strike a balance between promoting development opportunities and supporting infrastructure.

The collection of individual levy payments is done by the collecting authority, which in most cases is the same body as the charging authority. An exception is in London where the levy payments are collected on the Mayor of London's behalf.

Levy rates are set out in a charging schedule adopted by the charging authority (the Council). Levy rates are expressed as pounds per square metre, representing any new gross internal floorspace as a result of a development.



COMMUNITY FUNDS

CIL is there to fund local infrastructure. The needs of the location will be laid out in a plan.

To ensure that the community have a voice on how the levy should support the infrastructure, 15% of levy receipts are allocated to priorities decided by the local community where the development is taking place. This can be increased to 25% if the locality has a neighbourhood plan.

In areas where there is no parish or town council (or in the case of Wales community council), charging authorities will engage with the local community to determine the appropriate use of the levy receipts.

More detailed information on CIL can be viewed at:
<https://www.gov.uk/guidance/community-infrastructure-levy>





COLLECTION OF CIL

Charges will become due from the date that a chargeable development is commenced.

If a charging authority wishes to set its own levy payment deadlines and/or offer the option of paying in instalments this is published on their website, however if in doubt ask your local authority.

Anyone wishing to claim relief or an exemption from the levy should make sure that they submit their claim in good time. Most forms of relief or exemption must be claimed and approved prior to the commencement of development.

CHARGEABLE DEVELOPMENT



- Where CIL is in force, include an Additional CIL Information form with any planning application, this will help the collecting authority to calculate the amount payable Notice of Chargeable Development;
- Where a development is permitted via the General Permitted Development Order or through a Local Development Order, the developer or landowner submits a notice of chargeable development to the collecting authority (unless the development is less than 100 square metres, or the levy rate for the development is £zero per square metre);
- Where planning permission is granted for development, the collecting authority will expect the developer, landowner or another interested party to assume liability for the levy by submitting an assumption of liability form.

LIABILITY NOTICE



- The collecting authority then issues a liability notice to the applicant, the developer, and whoever has assumed liability for the scheme, which sets out the charge due and details of the payment procedure.

COMMENCEMENT NOTICE



- The relevant person then submits a notice to the collecting authority setting out when development is going to start – a commencement notice.

DEMAND NOTICE



- The collecting authority issues a demand notice to the landowner, or whoever has assumed liability, setting out the payment due dates in line with the payment procedure

PAYMENT



- On commencement of the development, the landowner, or whoever has assumed liability, should follow the correct payment procedure;
- The collecting authority must issue a receipt for each payment received, and transfer the funds to the charging authority (if that is a different body).



CIL v s106

Planning obligations can be used to mitigate any negative impacts a development may have and can be secured via a legal agreement such as Section 106 agreements or Unilateral Undertakings.

WHAT IS THE DIFFERENCE BETWEEN S106 AND CIL?

S106 Agreements cover site-specific mitigations, for instance the development may bring more cars into the area, the extra traffic on local roads may necessitate local road improvements or a development may be for a significant number of family homes which would put pressure on a local school without improvements to the school.

The key difference is that Section 106 Agreements are site-specific, meaning the contributions can vary significantly.

CAN PLANNING OBLIGATIONS BE NEGOTIATED?

This depends as contributions must be necessary, directly, fairly and reasonably related to the proposed development.

Methods of calculating contributions are based on the type of development, number of units or floorspace created. Don't be afraid to ask for the reasoning and policy basis for any potential contribution. If you think the requested payments/obligations are too much or unreasonable, there is a right of appeal either when the application is refused or against non-determination. A Planning Inspector then decides if you should be allowed your development without making any payment. However there are time and cost implications of an appeal, not to mention the risk that the appeal is dismissed.

See our 'Town Planning, The Basics...Appeals' booklet for further information.

SECTION 106 OBLIGATIONS

The **common uses** of planning obligations are to secure affordable housing and financial contributions to provide locally specific infrastructure. However these are not the only uses for a s106 obligation. A s106 obligation can:

- restrict the development or use of the land in any specified way;
- require specified operations or activities to be carried out in, on, under or over the land;
- require the land to be used in any specified way; or
- require a sum or sums to be paid to the authority on a specified date or trigger.

A planning obligation can be subject to conditions, it can specify restrictions definitely or indefinitely, and in terms of payments the timing of these can be specified in the obligation.

If the s106 is not complied with, it is enforceable against the person that entered into the obligation and any subsequent owner. The s106 can be enforced by an injunction.

In case of a breach of the obligation the authority can take direct action and recover expenses.

BE AWARE

- Planning applications can be 'minded to approve' by your local authority subject to a s106 agreement covering the obligations necessary to make the development acceptable. However the decision will not be issued until the agreement is signed and complete.
- As well as your own legal costs it's likely you will pay the Council's. Your local authority's legal team can draw up a s106, they will generally charge for this service, however sometimes it's the same fee as if they just check (before signing) a s106 you or a representative have produced, so its worth checking before preparing a draft agreement.
- Some authorities produce templates for s106 agreements which they publish on their website, if your planning authority does not have templates a quick internet search can bring up others which could be used.
- If you submit an appeal and there is a need for a planning obligation this must be completed and submitted at the outset of the appeal. A Planning Inspector will not approve a development subject to a s106 agreement. See out '**Town Planning, The Basics ...Appeals**' eBook for more information.
- All people with an interest in the application site will be required to agree and sign a s106, the applicant, owner, the Council etc this includes any Bank if there is a mortgage on the site. Make sure you know who will be required to be a party by checking your title deeds.
- A Unilateral Undertaking is an alternative to a s106 agreement and can be used for small scale obligations, the Council does not need to be party to these agreement and therefore you do not have to pay their legal fees.

FREQUENTLY ASKED QUESTIONS

Q: When is CIL/s106 payable?

A: CIL – upon commencement of development. s106 – payment, works or restrictions will have a trigger within the agreement which should be adhered to.

Q: What happens if I don't pay the required amount under CIL?

A: Surcharges can be placed on late payments, increasing your liability.

Q: Do I have to pay solicitor fees for a s106?

A: No although it is recommended as it's a legal agreement, not only will you pay your solicitor, but you'll be expected to pay the council's solicitor as well. These agreements can take a few weeks or months to complete.

Q: Why do I have this additional cost?

A: The aim of CIL and planning obligations are to balance any extra pressure created by a new development with improvements to ensure that the new development makes a positive contributions to the local area and community.

Q: Do all Councils have CIL?

A: No, Councils determine what their infrastructure need is and set a charging schedule in accordance with their need.

Q: What happens if I don't sign a s106 agreement?

A: If the Council determine planning obligations/contributions are required for the proposal they are likely to refuse your planning application unless an s106 agreement is completed.

If you need help find a Town Planning Consultant to advise and support you through the process, contact Planning House.

There are other [Town Planning... The Basics](#) booklets available to download at

www.planninghouse.co.uk





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